

ORIGINAL

PETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN **FILED**

Name MOTLEY EDWARD E MAR 10 2008  
 (Last) (First) (Initial)

Prisoner Number H-56441 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 INSTITUTIONAL ADDRESS CCI - P.O. BOX - 1902 TEHACHAPI, CA. 93581  
 NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

EDWARD EUGENE MOTLEY  
 (Enter the full name of plaintiff in this action.)

CV 08

1362

vs.

Case No. JF  
 (To be provided by the clerk of court)

W.J. SULLIVAN (WARDEN)

PETITION FOR A WRIT OF HABEAS CORPUS

E-filing

(Enter the full name of respondent(s) or jailor in this action)

Read Comments Carefully Before Filling InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your petition will likely be transferred to the district court for the district that includes the institution where you are confined. Habeas L.R. 2254-3(b).

1 Who to Name as Respondent

2 You must name the person in whose actual custody you are. This usually means the Warden or  
3 jailor. Do not name the State of California, a city, a county or the superior court of the county in which  
4 you are imprisoned or by whom you were convicted and sentenced. These are not proper  
5 respondents.

6 If you are not presently in custody pursuant to the state judgment against which you seek relief  
7 but may be subject to such custody in the future (e.g., detainees), you must name the person in whose  
8 custody you are now and the Attorney General of the state in which the judgment you seek to attack  
9 was entered.

10 A. INFORMATION ABOUT YOUR CONVICTION AND SENTENCE

11 i. What sentence are you challenging in this petition?

12 (a) Name and location of court that imposed sentence (for example; Alameda

13 County Superior Court, Oakland):

14 SANTA CLARA COUNTY SUPER. CT. SANTA CLARA

15 Court

Location

16 (b) Case number, if known 155474

17 (c) Date and terms of sentence 11/4/92 - LIFE + 30 YRS.

18 (d) Are you now in custody serving this term? (Custody means being in jail, on  
19 parole or probation, etc.) Yes ☒ No ☐

20 Where?

21 Name of Institution: CCI - TEHACHAPI IV

22 Address: P.O. BOX - 1902, TEHACHAPI, CA. 93581

23 2. For what crime were you given this sentence? (If your petition challenges a sentence for  
24 more than one crime, list each crime separately using Penal Code numbers if known. If you are  
25 challenging more than one sentence, you should file a different petition for each sentence.)

26 (Ct. 1) Kidnap/Robbery 269(b); (Cts. 2 & 4) Oral Copulation 268(a)(c); (Cts. 3 & 5) Penetra-  
27 -tion Foreign Object 289(a); Personal use Firearm (Cts. 1, 2, & 4) 12022.3(c), 12022.3  
28 (b), 12022.5(a) w/ arming Allegations... (usage reversed on appeal)

3. Did you have any of the following?

Arraignment: Yes ☒ No ☐

Preliminary Hearing: Yes ☒ No ☐

Motion to Suppress: Yes ☐ No ☒

4. How did you plead?

Guilty ☐ Not Guilty ☒ Nolo Contendere ☐

Any other plea (specify) N/A

5. If you went to trial, what kind of trial did you have?

Jury ☒ Judge alone ☐ Judge alone on a transcript ☐

6. Did you testify at your trial?

Yes ☐ No ☒

7. Did you have an attorney at the following proceedings:

(a) Arraignment Yes ☒ No ☐

(b) Preliminary hearing Yes ☒ No ☐

(c) Time of plea Yes ☒ No ☐

(d) Trial Yes ☒ No ☐

(e) Sentencing Yes ☒ No ☐

(f) Appeal Yes ☒ No ☐

(g) Other post-conviction proceeding Yes ☒ No ☐

8. Did you appeal your conviction?

Yes ☒ No ☐

(a) If you did, to what court(s) did you appeal?

Court of Appeal Yes ☒ No ☐

Year: 1994 Result: Reversal w/cts. 2<sup>nd</sup> 3<sup>rd</sup> 5 otherwise affirmed

Supreme Court of California Yes ☐ No ☒

Year:            Result:           

Any other court Yes ☐ No ☒

Year:            Result:           

(b) If you appealed, were the grounds the same as those that you are raising in this

petition?

Yes \_\_\_\_\_ No ☒

(c) Was there an opinion?

Yes ☒ No \_\_\_\_\_

(d) Did you seek permission to file a late appeal under Rule 31(a)?

Yes \_\_\_\_\_ No ☒

If you did, give the name of the court and the result:

N/A

9. Other than appeals, have you previously filed any petitions, applications or motions with respect to this conviction in any court, state or federal? Yes ☒ No \_\_\_\_\_

[Note: If you previously filed a petition for a writ of habeas corpus in federal court that challenged the same conviction you are challenging now and if that petition was denied or dismissed with prejudice, you must first file a motion in the United States Court of Appeals for the Ninth Circuit for an order authorizing the district court to consider this petition. You may not file a second or subsequent federal habeas petition without first obtaining such an order from the Ninth Circuit. 28 U.S.C. §§ 2244(b).]

(a) If you sought relief in any proceeding other than an appeal, answer the following questions for each proceeding. Attach extra paper if you need more space.

I. Name of Court: Santa Clara County Superior Court

Type of Proceeding: Habeas Corpus

Grounds raised (Be brief but specific):

a. IAC - TRIAL COUNSEL

b. IAC - APPELLATE COUNSEL

c. INSUFFICIENCY OF EVIDENCE 289(a) - 209(b)

d. \_\_\_\_\_

Result: DENIED

Date of Result: 2/17/04

II. Name of Court: SIXTH DISTRICT - COURT OF APPEALS

Type of Proceeding: HABEAS CORPUS.

Grounds raised (Be brief but specific):

- 1 a. IAC - TRIAL COUNSEL  
 2 b. IAC - APPELLATE COUNSEL  
 3 c. INSUFFICIENT EVID. 289(a) 209(b)  
 4 d. RESPONDENT'S FAILURE TO CONTRAVERT ALLEGATIONS / COURT'S  
FAILURE TO REVIEW CLAIM.  
 5 Result: DENIED Date of Result: 3/9/05

6 III. Name of Court: CALIFORNIA SUPREME COURT  
 7 Type of Proceeding: HABEAS CORPUS - PETITION for REVIEW

8 Grounds raised (Be brief but specific):

- 9 a. IAC - TRIAL COUNSEL  
 10 b. IAC - APPELLATE COUNSEL  
 11 c. INSUFFICIENT EVID. 289(a) 209(b)  
 12 d. FAILURE TO CONTRAVERT ALLEGATIONS / COURT'S FAILURE  
TO REVIEW CLAIM  
 13 Result: DENIED Date of Result: 6/8/05

14 IV. Name of Court: PLEASE SEE EXHIBITS "I", "J", "K"

15 Type of Proceeding: AND "L" OF THIS PETITION

16 Grounds raised (Be brief but specific):

- 17 a. SAME AS ABOVE AT II AND III  
 18 b. \_\_\_\_\_  
 19 c. \_\_\_\_\_  
 20 d. \_\_\_\_\_

21 Result: SEE EXHIBITS Date of Result: \_\_\_\_\_

22 (b) Is any petition, appeal or other post-conviction proceeding now pending in any court?

23 Yes ✓ No ✓

24 Name and location of court: CALIFORNIA SUPREME COURT

25 B. GROUNDS FOR RELIEF

26 State briefly every reason that you believe you are being confined unlawfully. Give facts to  
 27 support each claim. For example, what legal right or privilege were you denied? What happened?  
 28 Who made the error? Avoid legal arguments with numerous case citations. Attach extra paper if you

1 need more space. Answer the same questions for each claim.

2 [Note: You must present ALL your claims in your first federal habeas petition. Subsequent  
3 petitions may be dismissed without review on the merits. 28 U.S.C. §§ 2244(b); McCleskey v. Zant,  
4 499 U.S. 467, 111 S. Ct. 1454, 113 L. Ed. 2d 517 (1991).]

5 Claim One: PETITIONER WAS DENIED DUE PROCESS OF LAW, VIOLATING  
6 ARTICLE I, 24, 29 OF THE CALIFORNIA CONSTITUTION AND THE  
7 SUPPORTING FACTS: FOURTEENTH AMENOMENT OF THE UNITED STATES  
8 CONSTITUTION. . .

9 PLEASE SEE NEXT PAGE 6(1) et. seq. FOR  
10 FULL STATEMENT OF CLAIMS AND FACTS ETC. . .

11 Claim Two: \_\_\_\_\_

12 " "

13 Supporting Facts: \_\_\_\_\_

14 " "

15 " "

16 Claim Three: \_\_\_\_\_

17 " "

18 Supporting Facts: \_\_\_\_\_

19 " "

20 " "

21 If any of these grounds was not previously presented to any other court, state briefly which  
22 grounds were not presented and why:  
23

24 N/A

CLAIM I

PETITIONER WAS DENIED DUE  
PROCESS OF LAW, VIOLATING  
ARTICLE I, 24, 29 OF THE  
CALIFORNIA CONSTITUTION AND  
14th AMENDMENT OF THE UNITED  
STATES CONSTITUTION

On 12/16/02 Santa Clara County Superior Court Judge Alfonso Fernandez issued an "Order to Show Cause" in a petition for writ of habeas corpus challenging a 1992 conviction. Said "OTSC" was issued regarding grounds "1" and "4" of said habeas. (See Ex. A pg. 9 and Ex. B - ground 4)

<sup>1</sup>On 1/30/03 Santa Clara County deputy district attorney Ronald R. Rico submitted the "Peoples Return", which made no mention of "Insufficiency of Evidence".

After reviewing the "Return" (and some research) petitioner found that respondent's failure to "controvert all the material allegations" was the equivalent of admittance. Petitioner immediately contacted appointed counsel Steven D. Woodson (by mail) requesting that he amend or supplement the Traverse, alerting the court of this fact. Counsel did not respond, so petitioner submitted a motion on his own (Ex. C; See also Ex. D - - the date said motion was mailed) the court did not reply.

Approximately one week later petitioner received the court's "Order for Evidentiary Hearing" (Ex. E)

FN. 1) PETITIONER CANNOT AFFORD TO PAY FOR COPIES OF THE RETURN, TRAVERSE, AND EVIDENTIARY HEARING TRANSCRIPTS - - HE ONLY HAS ONE OF EACH.



1 Once the hearing commenced the arguments were restrict-  
 2 ed to the Ineffective Assistance of Counsel issues, so just be-  
 3 fore the hearing adjourned petitioner prompted counsel to add-  
 4 ress the court regarding respondent's failure to controvert the  
 5 material allegations. (Ex. F) The respondent countered stating  
 6 "the real issue" is adequacy of counsel. . . and the court  
 7 agreed. (Ex. G)

8 After receiving the "Final Order" (Ex. H) petitioner present-  
 9 ed these same issues (along with the original ones) to the  
 10 California Court of Appeal and was Denied without prejudice  
 11 to the filing of an original habeas petition accompanied by  
 12 the appropriate record. (In re Edward E. Motley, No. Ho27327  
 13 Cal. App. 6th Dist.) In pursuit of the "Evidentiary Hearing" tran-  
 14 scripts petitioner submitted a "Writ of Mandate, (Motley v. Sup-  
 15 erior Ct. of Santa Clara, No. Ho27810 Cal. App. 6th Dist.) which  
 16 was Denied without prejudice due to the court's issuance of  
 17 "OTSC" in Edward Motley on habeas corpus, No. Ho27875,  
 18 which was eventually granted by what petitioner believed to  
 19 be default.

20 Upon receipt of the "Evidentiary Transcripts" petitioner  
 21 made the same claims in a new habeas to the Cal. Ct. of  
 22 Appeal, 6th Dist. . The petition was denied without comment.  
 23 Petitioner then presented the same issues in a "Petition  
 24 for Review in the Cal. Supreme Court and was again Denied  
 25 without comment. (Please see Appendix A)

26 Petitioner then submitted a Federal habeas petition  
 27 in this Court making these same claims, but the claims were



1 heard in connection with the initial issues brought on habeas,  
 2 and subsequently Denied based upon the provisions of the  
 3 AEDPA's statute of limitations (Ex. I and J)

4 Petitioner appealed to the Ninth Circuit (Ex. K) and req-  
 5 uested a rehearing. (Ex. L)

6  
 7 THE STATE FAILED TO REVIEW  
 8 PETITIONER'S INSUFFICIENCY  
 9 OF EVIDENCE CLAIM IN ACC-  
 10 ORDANCE WITH THE STANDARD  
 11 OF REVIEW SET BY CALIFORNIA  
 12 AND THE U.S. SUPREME COURT

13 In Jackson v. Virginia, (1979) 443 U.S. 307, 314 the U.S.  
 14 Supreme Court held that "the critical inquiry on review of  
 15 the sufficiency of the evidence to support a criminal convic-  
 16 tion . . . is to determine whether the record evidence could  
 17 reasonably support a finding of guilty beyond a reasonable  
 18 doubt". The Jackson Court went on to explain that this inquiry  
 19 does not require a court to ask whether it believes that the  
 20 evidence at trial established guilt beyond a reasonable  
 21 doubt. (Id. at pp. 318-319) (See also. People v. Johnson, (1980)  
 22 26 Cal. 3d 557; People v. Towler, 1982 31 Cal. 3d 105, 117-119; fully  
 23 discussed herein at Ex. B)

24 A review of the "OTSC", (Ex. A) the "Order for Evidentiary  
 25 Hearing", (Ex. E) and the "Final Order" (Ex. H) will reveal that  
 26 this "required review" was not applied in this instance. Alth-  
 27 ough the court did base its "OTSC" on IAC and insufficiency of

1 evidence, while stating that "At the very least, it would mean  
2 that there was insufficient evidence for personal use enhance-  
3 ment". At the "Evidentiary Hearing" the court declined to hear  
4 the Insufficiency Evidence and made no mention of the  
5 sufficiency of evidence regarding the use enhancement.

6 Thusly, petitioner did not receive a full and fair review  
7 of his Insufficiency of Evidence claims.

### 8 9 THE STATE COURT FAILED 10 TO ADHERE TO IT'S OWN LAWS

11 In McQueary v. Blodgett, 924 F.2d 829, 831 n.1 (9th Cir.1991)  
12 the court reasoned that "The writ of habeas corpus exists pre-  
13 cisely to allow federal-based challenges to state law". (See  
14 also; Hernandez v. Ylst, 930 F.2d 714, 719 (9th Cir. 1991))

15 Here, the state arbitrarily deprived petitioner of his  
16 right to have the people controvert the material allegations  
17 relative to the claims issued in the "OTSC". The people's failure  
18 to address the insufficiency of evidence claim inabled petit-  
19 ioner to further develop the claim and rendered it useless  
20 for the purposes of the proceeding. (See People v. Duvall, 37 Cal.  
21 Rptr. 2d 259 (1995); Cal. Rules of Ct. Rule 4.551(d)). In Calif-  
22 ornia, when either party in a habeas corpus proceeding  
23 fails to controvert the material allegations in the Return or  
24 Denial those allegations are deemed admitted for the purp-  
25 oses of the proceedings and the court must rule according-  
26 ly. (In re Lewallen, 23 Cal. 3d 274 (1979); People v. Duvall, supra.)  
27 In this instance, petitioner alerted the court. (Ex.C) But the

1 court did not entertain petitioner's motion, which entailed a very  
 2 reasonable request. The court's refusal to entertain the motion  
 3 was fundamentally unfair, for the "OTSC" was issued for two  
 4 reasons, and <sup>HAD</sup> there been any misunderstanding regarding the  
 5 reasoning behind the issuance of the Insufficiency of Evid-  
 6 ence claim, that was the time to sort it out. Instead, while  
 7 having knowledge of petitioner's stance regarding the "OTSC", the  
 8 court issued its "Order for Evidentiary". Moreover, in the days  
 9 leading up to the hearing petitioner asked counsel (face to face)  
 10 about the status of the Insufficiency of Evidence claim and  
 11 counsel stated that he was unsure as to what the issuance  
 12 was based upon.

13 In the waning stages of the hearing the court missed  
 14 yet another opportunity to set the record straight as to  
 15 its issuance of the Insufficiency of evidence claim. (Ex. F  
 16 and Ex. G) In the "Final Order" the court asserted that pet-  
 17 itioner's contentions regarding Nelson and Watkins in conn-  
 18 ection with trial counsel's failure to investigate supported  
 19 petitioner's claim that the evidence was insufficient to  
 20 convict him of count one. Petitioner respectfully submits  
 21 that the court's view of petitioner's Insufficiency of Evid-  
 22 ence claim is in error, (See Ex. B-the actual claim) the  
 23 Ineffective Assistance of Counsel claim was independent  
 24 of that claim. Furthermore, a review of the evidentiary  
 25 hearing transcripts will reveal that the only time the  
 26 Insufficiency of Evidence claim was mentioned is when  
 27 counsel brought it up. (Ex. F) In fact the court agreed with

1 the people that the only two interests were "counsel's per  
 2 formance" regarding the fingerprint evidence and the dec-  
 3 ision to forgoe calling Ricky Nelson. (EX.G)

4 Petitioner sought relief in the Cal. Ct. of Appeals 6th  
 5 Dist. adding the contentions  $\longleftrightarrow$  (in detail) herein, but due to  
 6 the "Evidentiary Hearing Transcripts" not being attached the  
 7 petition was DENIED. Petitioner then attempted a number  
 8 of legal maneuvers (mentioned above at pg. 6(2)) that took  
 9 approximately one year to obtain the transcripts. Petitioner  
 10 then resubmitted a new habeas, which was DENIED without  
 11 comment or citation. Petitioner went through an entire year  
 12 of confusing legal processes to obtain transcripts so that  
 13 these issues may be heard only to have them ignored. It is  
 14 well established that a state petition for writ of habeas  
 15 corpus cannot be summarily denied -- a brief exp-  
 16 lanation must be given. Nonetheless, petitioner submitted  
 17 a "Petition for Review" to the Cal. Supreme Ct., and again  
 18 was DENIED without comment or citation. (See Appendix A)

19 In Navarette v. Comstock, (1971) 325 F.Supp. 261, 263  
 20 (which cites Townsend v. Sain, 372 U.S. 293, 313 83 S.Ct. 745 (1963))  
 21 the court made it clear, stating that a habeas corpus court  
 22 "... must accept as true allegations which have not been  
 23 controverted, though seemingly incredible." Credibility in  
 24 this instance is a non-issue, for petitioner alleged that the  
 25 evidence was insufficient, respondent admitted it, and the  
 26 court was obligated to rule in petitioner's favor.

27 Here, the state's actions were fundamentally unfair,



1 for if petitioner had received the full panoply of state and  
 2 federal law the petition would have been granted based  
 3 upon the evidence being insufficient to support the conviction  
 4 on count one. Petitioner believes that had the roles been rev-  
 5 ersed and petitioner had failed in his duty to controvert any  
 6 material allegations he would have suffered the consequences  
 7 -- no matter how steep. (Cooks v. Spalding, 666 F.2d 738 (9th  
 8 Cir. 1981); Fetterly v. Paskett, 997 F.2d 1295 (9th Cir. 1993)) The  
 9 state has committed reversible error by failing to adhere to  
 10 its own laws -- this error cannot be deemed harmless, for  
 11 petitioner most probably (in 2004) would be a free man had  
 12 the state not deprived petitioner of his right to due proc-  
 13 ess of law.

14 In Hicks v. Oklahoma, 447 US 343, 100 S.Ct. 2227, 65  
 15 L.Ed 2d 175 the Court reasoned that the Fourteenth Amen-  
 16 dment preserves against arbitrary deprivation by the  
 17 state, therefore this honorable court must -- in the interest  
 18 of preserving the U.S. Constitution and bringing about  
 19 justice -- issue the relief being sought herein.

### 20 21 THE STATE COURT'S FINDINGS 22 OF FACT WERE IN ERROR

23 In Townsend v. Sain, supra the Court reasoned that,  
 24 an evidentiary hearing in a habeas corpus proceeding  
 25 to determine facts is mandatory when certain procedural  
 26 deficiencies occurred in the state courts' fact finding pro-  
 27 cedures. (*Id* at (U.S.) 313)

1 Here, the court's crucial finding of fact was that "Ricky  
 2 Nelson's statements in his interviews conflicted and changed  
 3 on several key issues, including who was initially pres-  
 4 ent when the victim was abducted. As a result, petition-  
 5 er's defense counsel made a proper tactical decision  
 6 to not call Nelson as a witness due to his inconsistent state-  
 7 ments. (People v. Bolin, (1998) 18 Cal. 4th 297, 334)." (Ex. H)

8 Petitioner points out that the court's "OTSC" asserted  
 9 that "Nelson consistently claimed" that Watkins was the  
 10 person who brandished the firearm and drove the victim's  
 11 vehicle. (Ex. A pg. 8) Yet, defense counsel testified that  
 12 Nelson was inconsistent about this because he (Nelson) told  
 13 a version that had him (Nelson) in the "Dodge Colt" with pet-  
 14 itioner while Watkins abducted the victim alone. As for petit-  
 15 ioner's whereabouts, "Nelson consistently claimed" that petit-  
 16 ioner did not leave the "Dodge Colt", which in all due re-  
 17 spect was the key issue, because it corroborated petition-  
 18 er's claim that he did not brandish a firearm and abduct  
 19 the victim. (Ex. M)

20 While testifying at the evidentiary hearing defense  
 21 counsel admitted that he did not interview Nelson, which  
 22 calls into question the court's finding that counsel made a  
 23 proper tactical decision to not call Nelson. (See Chambers v.  
 24 Armontrout, 907 F.2d 825 "The decision to interview a pot-  
 25 ential witness is not a decision related to trial strategy,  
 26 rather it is a decision related to adequate preparation  
 27 for trial.") Trial counsel's decision had no investigational basis

1 -- it even pales in comparison to Chambers' defense couns-  
2 el's reading of trial transcripts of testimony being made under  
3 oath -- petitioner's counsel read a police interview and  
4 transcripts of an interview that was prepared by formal couns-  
5 el and decided that Nelson would do more harm than good. This  
6 surely was not a proper tactical decision, especially where  
7 there were no other witnesses that could testify to petition-  
8 er's whereabouts. The evidentiary hearing also revealed  
9 other deficiencies in counsel's performance.

10 These facts coupled with the errors in the procedures  
11 mentioned above amount to an evidentiary hearing that was  
12 useless -- the record speaks for itself -- all of the  
13 claims weren't adjudicated and the record is simply mis-  
14 stated in regards to Nelson and what petitioner's claims  
15 actually consisted of.

16 At the very least, this court should order an "Evid-  
17 entiary Hearing, for Nelson was not on hand to testify at  
18 the hearing, which may be the fault of post-conviction  
19 counsel, for Nelson was subpoenaed and showed for the  
20 initial hearing date, which was continued for Unforseeable  
21 Reasons. Nelson could not be found at the next hearing  
22 date. Nelson has yet to state "under oath" that petitioner  
23 was not a principle in the abduction.

## 24 CONCLUSION

25 Here, petitioner was tried and convicted of crimes  
26 that involved three suspects. Petitioner received a Life  
27





1 sentence with several enhancements. The other suspects re-  
2 ceived 3 years and 8 months and a sentence petitioner  
3 believes was 13 years (under halftime law). Petitioner was  
4 offered a Life sentence as a plea bargain. It has been  
5 said repeatedly by different courts that petitioner's  
6 "participation" in the charged crimes justifies the con-  
7 viction and punishment. If law is based upon equity  
8 then petitioner's "participation" should not have called for  
9 such dogged prosecution and the overwhelming sentence.  
10 Petitioner has served nearly 16 years and has always  
11 maintained his innocence of brandishing a weapon that  
12 evening -- the facts of the case and Nelson's state-  
13 ments support this claim. Petitioner was called back on  
14 habeas corpus in "03"-04 and treated unfairly when the  
15 supposed objective was finding the truth. Petitioner  
16 understands the gravity of the crimes and owned up to  
17 the role he took in them. Petitioner is not looking to recover  
18 millions of dollars -- he only seeks to regain his freedom --  
19 for he knows that he was no innocent bystander when these  
20 crimes occurred, but he maintains that he should no longer  
21 be incarcerated, for he's served his time (and some) for  
22 his individual actions.

23 The state arbitrarily deprived petitioner by their  
24 refusal to render the relief which was mandated by law,  
25 therefore this Honorable Court must reverse petitioner's  
26 conviction.

27

6(10)

PRAYER FOR RELIEF:  
 2 Petitioner prays this Honorable Court will:  
 1) Reverse petitioner's conviction and order that petitioner be released forthwith from CDRK custody;  
 2) or any other form of relief this Court deems just and proper.

/ /

# DECLARATION

I, Edward Motley, declare under penalty of perjury that the foregoing is true and correct. This was executed on 2/27/08 at Tehachapi-CCI in Kern county California.

Dated: 2/27/08

Respectfully Submitted,

151 Edward E. Motley  
1P1 EDWARD MOTLEY

IN PRO PER

FN.2) DUE TO RECEIVING THE RECENT CALIF. SUP. CT. "DENIAL" (EXHIBIT D) PETITIONER COMBINES THE ISSUES INSTEAD OF SUBMITTING SEPERATE PETITIONS. PLEASE SEE NEXT PAGE. . .

SUPPLEMENTAL PLEADINGSCLAIM.IIPETITIONER'S 14th AMENDMENTRIGHTS WERE VIOLATED. . .

To state facts and basis of this claim petitioner relies upon EXHIBIT "N" (THE HABEAS SUBMITTED TO THE CAL. SUP. CT.) w/ the contentions below. . .

THE STATE FAILED TO ADHERE TOIT'S OWN LAWS

At GROUND 2 (EX. N) petitioner stressed to the state courts that due to the partial reversal on direct appeal California Penal Code 667.6(d) could no longer stand and therefore his sentence should be readjusted, since the required element of violence is no longer there. Petitioner also argued that according to Cal. Pen. Code 1170(b) and Cal. R. of Ct. 4.420(c) the trial court erred by both enhancing and aggravating the term.

The issues presented at GROUND 2 weren't acknowledged by the Superior Court, so petitioner brought the same issue along with GROUND 4 (EX. N) to the Cal. Ct. of Appos. . . GROUNDS 2 and 4 weren't entertained by the Appeals Court. Petitioner submitted EXHIBIT "N" to the Cal. Supreme Court and was again DENIED without comment or citation. (EX. O)

Here, the state was bound by its own law and the U.S. Constitution to at the very least, give an opinion on GROUNDS 2 and 4 of the state petitions. Furthermore, GROUND 2 is a



meritable claim and California was bound by it's own laws to properly adjust petitioner's sentence. In not doing so the state arbitrarily deprived petitioner of "Equal Protection of the law". Exhibit "N" speaks volumes -- petitioner sought to exercise his right to to seek redress in a court(s) of law, but the states refusal to address petitioner's claims impeded upon that right, which is guaranteed by the California and U.S. Constitutions. (See again Hicks v. Oklahoma, supra.)

### CUNNINGHAM v. CALIFORNIA

To avoid being repetitious petitioner directs this court's attention to Grounds 1 and 3 of Ex. N to state the facts and arguments in their entirety for this portion of the petition.

I declare under the penalty of perjury that the foregoing is true and correct.

RESPECTFULLY SUBMITTED,  
*/s/ Edward E. Motley*



List, by name and citation only, any cases that you think are close factually to yours so that they are an example of the error you believe occurred in your case. Do not discuss the holding or reasoning of these cases:

HICKS v OKLAHOMA supra.

Do you have an attorney for this petition?

Yes ☐

No ☒

If you do, give the name and address of your attorney:

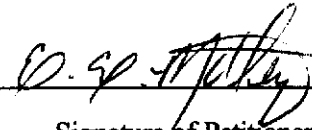
N/A

WHEREFORE, petitioner prays that the Court grant petitioner relief to which s/he may be entitled in this proceeding. I verify under penalty of perjury that the foregoing is true and correct.

Executed on

2/27/08

Date



Signature of Petitioner

(Rev. 6/02)



LEONARD E. MOBILE 7 1100114  
CALIFORNIA CORRECTIONAL INSTITUTION  
P.O. BOX - 1902 (44-2C-110)  
TEHACHA, CA. 93581

*Handwritten signature/initials*

**RECEIVED**

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